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## **DEPARTMENT OF VETERANS AFFAIRS**

### **Privacy Act Of 1974**

**AGENCY:** Department of Veterans Affairs (VA)

**ACTION:** Notice of New System of Records

**SUMMARY:** The Privacy Act of 1974 (5 U.S.C. 552(e) (4)) requires that all agencies publish in the Federal Register a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is establishing a new system of records entitled "VA National Cemetery Pre-Need Eligibility Determination Records" - VA (SORN # 175VA41A).

**DATES:** Comments on this new system of records must be received no later than

**[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL**

**REGISTER]**. If no public comment is received during the period allowed for comment or unless otherwise published in the Federal Register by the VA, the new system will become effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Written comments concerning the proposed amended system of records may be submitted by: mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Room 1068, Washington, DC 20420; fax to (202) 273-9026; or email to [www.Regulations.gov](http://www.Regulations.gov). All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the

comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** National Cemetery Administration (NCA) Privacy Officer (43D), Department of Veterans Affairs, 810 Vermont Avenue N.W., Washington, D.C. 20420, telephone (202) 632-7728 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

The proposed system of records contains military service information, entry and discharge documentation, personal identifiers, demographic data (e.g., name, social security number, physical address, phone number, email address), and socioeconomic characteristics (e.g., date of birth, place of birth, date of death, gender, marital records; health records; health related information, benefit related information) provided with an application for a determination of eligibility for burial in a VA national cemetery in advance of an individual's time of need (referred to as "pre-need"). The proposed system of records contains information on Veterans, Veteran beneficiaries, members of the Armed Forces of the United States and their beneficiaries, as well as claimants (such as funeral home directors) submitting pre-need eligibility determinations on behalf of potentially eligible individuals. VA authorized users include VA employees, VA contractors, and other individuals with access to VA IT systems. The purpose of the system of records includes but is not limited to providing a repository for military, personal, and administrative information that is collected, retrieved, and disclosed to authorized individuals related to pre-need eligibility determinations for burial in a VA national cemetery. Information contained in this system of records may also be used as an aggregate, non-personally identifiable set to track, evaluate, and report on local and

national benefits initiatives, such as cemetery development and emerging burial needs. Information in this proposed system of records will be protected from unauthorized access through administrative, physical, and technical safeguards. Access to the hard copy and computerized information will be restricted to VA employees and VA contractors by means of PIV card and PIN, and/or passwords. Hard copy records will be maintained in offices that are restricted by cypher locks during work hours and locked after duty hours with security camera surveillance of the office area and facility. The VA facility is located in GSA-leased office space and is under the protection of the Department of Homeland Security.

VA is proposing the following routine use disclosures of information to be maintained in the system:

VA may disclose information from the record of an individual in response to an inquiry from the congressional offices made at the request of that individual or by another on behalf of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs

(whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.

Effective Response. A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

Disclosure of Information. Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. § 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond timely and effectively, in accordance with 5 U.S.C. § 552a(b)(3) of the Privacy Act, agencies should publish a routine use for systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under 38 U.S.C. § 5701(a) and (f), VA may only disclose the names and addresses of veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. § 552a(b)(7).

VA may disclose information from this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DOJ is a use of the information

contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled “Privacy Act Guidance—Update,” currently posted at

<http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf>. VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. § 552(b)(11), or any other provision of subsection (b), in accordance with the court’s analysis in Doe v. DiGenova, 779 F.2d 74, 78-84 (D.C. Cir. 1985) and Doe v. Stephens, 851 F.2d 1457, 1465-67 (D.C. Cir. 1988).

VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement. This routine use

includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA. This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A-130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation. VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections. VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law. VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C. NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

## **SIGNING AUTHORITY**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of



Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, approved this document on August 2, 2016, for publication.

Dated: August 8, 2016

Kathleen M. Manwell  
Program Analyst  
VA Privacy Service  
Office of Privacy and Records Management  
Department of Veterans Affairs

**SORN 175VA41A**

**SYSTEM NAME:** VA National Cemetery Pre-Need Eligibility Determination Records-VA

**SYSTEM LOCATION:**

Records are maintained at the National Cemetery Scheduling Office (41A1), Suite 200, 4850 Lemay Ferry Road, St. Louis, MO, 63129.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 38 U.S.C., Section 2402.

**PURPOSE (S):** The purpose for which the records are used will include but will not be limited to the provision of VA burial and memorial benefits; provision of information about VA burial and memorial benefits, including specific claims; determination of eligibility for burial in a VA national cemetery; disclosure of military service information upon request from VA-funded State and Tribal Veterans cemeteries; coordination of committal services and interment upon request of families, funeral homes, and others of eligible decedents at VA national cemeteries; investigation of potential bars to benefits for an otherwise eligible individual. VA will maintain records and information associated with pre-need claims in a recallable system for use at a claimant's time of death and upon receipt of a request for burial in a VA national cemetery for that claimant. Data may also be used at an aggregate non-personally identifiable level to track and evaluate memorial and burial benefit initiatives.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** The records contain information on Veterans, family members of Veterans, Members of the Armed Forces (Servicemembers), family members of Servicemembers, Reservists and Retirees (Active Duty; Reserves; or National Guard), and other VA customers (e.g., attorneys,

agents, Veterans Service Organizations, funeral directors, coroners, Missing in America Project (MIAP) volunteers, State and local governmental administrators, in addition to VA authorized users permitted by VA to access VA IT systems (e.g., VA employees, VA contractors, VA registered volunteers).

**CATEGORIES OF RECORDS IN THE SYSTEM:** Records may include information submitted to VA by means of paper or online forms that respondents can mail or electronically transmit by fax or email for storage and retrieval in VA's secure filing and IT systems. Records may contain information, such as demographics and personal identifiers (e.g. names, mailing addresses, email addresses, phone numbers, social security numbers, VA claim numbers and military service numbers); socioeconomic characteristics (e.g., date of birth, place of birth, date of death, gender, marital records; health records; health related information, benefit related information); military service information (e.g., dates of active duty, dates of active duty for training, military service numbers, branch of service including Reserves or National Guard service, locations of service for National Guard, dates of entry, enlistment, or discharge, type and character of discharge, rank, awards, decorations, and other military history and information). Records may also include supporting documentation submitted to identify individuals submitting pre-need applications on behalf of claimants. Supporting documentation may include, but is not limited to the following items: VA Form 21-22 (Appointment of Veterans Service Organization as Claimant's Representative), VA Form 21-22a (Appointment of Individual as Claimant's Representative) for an Authorized Attorney, or Agent; proof of prior written authorization, such as a durable power of attorney, or an affidavit establishing a caregiver relationship to the claimant (spousal, parent, other

relative); and documentation showing the individual as the court-appointed representative authorized to act on behalf of as the claimant.

#### **RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by Veterans; Veteran beneficiaries; members of the Armed Forces of the United States including Reserves and National Guard and their beneficiaries, as well as other individuals (such as funeral home directors) submitting pre-need eligibility determinations on behalf of claimants; VA employees; other VA authorized users (e.g., Department of Defense), VA IT systems and databases; VA claims records; and official military records IT systems.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance. VA may also disclose information to other Federal, state and local, tribal or foreign government agencies to assist with verifying military service for the purpose of providing a benefit.
2. VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to

the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

3. VA may, on its own initiative, disclose information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.
4. VA may disclose information from this system of records to the Department of Justice (DOJ), either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to

DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

5. VA may disclose information from this system of records to individuals, U. S. Military Service Departments, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.
6. VA may disclose information from this system to the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.
7. VA may disclose information from this system to the Federal Labor Relations Authority (FLRA), including its General Counsel, information related to the

establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

8. VA may disclose information from this system to the Merit Systems Protection Board (MSPB), or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.
9. VA may disclose information from this system to the National Archives and Records Administration (NARA) and General Services Administration (GSA) in records management inspections conducted under title 44, U.S.C.
10. VA may disclose information from this system of records upon request from funeral homes participating in NCA committal services, burials, and other memorial services, family members in need of military service documentation related to a pre-need claim, and VA-funded State and Tribal Veteran cemeteries seeking military service documentation.

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records in this system are maintained in paper and electronic formats in the NCA National Cemetery Scheduling Office. Records are maintained on electronic storage media including magnetic tape, disk, and laser optical media.

**POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:** Information is retrievable by the use of name only; name and one or more numbers (service or social security); name and one or more criteria (e.g., date of birth or dates of service); VA claim number; or other VA or NCA assigned identifier.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records are retained in accordance with records retention standards approved by the Archivist of the United States, the National Archives and Records Administration, and published in the Agency Records Control Schedules. Paper records are destroyed by shredding at the time of disposition, and automated storage media is retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

**PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:**

Information in the system is protected from unauthorized access through administrative, physical, and technical safeguards. Access to the hard copy and computerized information is restricted to authorized VA employees and VA contractors by means of PIV card and PIN, and/or passwords. Information security officers and system data stewards review and authorize data access requests. VA regulates data access with security software that authenticates users and requires individually unique codes and passwords. VA requires information security training for all staff and instructs staff on the responsibility each person has for safeguarding data confidentiality. Hard copy records are maintained in offices that are restricted by cypher locks during work hours,



and locked after duty hours with security camera surveillance of the office area and facility.

**SYSTEM MANAGER(S) AND ADDRESS:** The Official maintaining this system of records and responsible for policies and procedures is the Director (41A1), National Cemetery Scheduling Office, Suite 200, 4850 Lemay Ferry Road, St. Louis, MO 63129.

**RECORD ACCESS PROCEDURES:** Individuals seeing information regarding access to and contesting of records in this system may write or call the NCA Privacy Officer, (43D), National Cemetery Administration, 810 Vermont Avenue N.W., Washington, DC 20420

**CONTESTING RECORD PROCEDURES:** See Record Access Procedures above.

**NOTIFICATION PROCEDURE:** Individuals who wish to determine whether this system of records contains information about them should contact the NCA Privacy Officer (43D), National Cemetery Administration, 810 Vermont Avenue N.W., Washington, DC 20420. Inquiries should include as much of the following information to identify the record: individual's full name, social security number, individual's return address.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:** None.

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